

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVANGELINA FORSBERG)

Plaintiff,)

vs.)

JAMES PEFANIS,)
AME FINANCIAL CORPORATION)
and GEORGIA MUTUAL)
MORTGAGE CORPORATION)

Defendants.)

CIVIL ACTION FILE NO.
1:07-cv-3116-JOF-RJV

**PLAINTIFF'S MOTION FOR DEFAULT
SANCTION FOR DEFENDANTS' FRAUD ON THE COURT**

Plaintiff hereby files this Motion seeking a default judgment and other sanctions against Defendants for their fraud on the Court that has been established with clear and convincing evidence.

In this lawsuit set on this Court's October 13, 2009 trial calendar, there has been a very recent revelation of fraud on the Court by Defendants regarding key evidence on the pivotal factual issue in this case. Plaintiff Forsberg's central factual allegation in this suit is that Defendant Pefanis sexually assaulted her in an

AME office in front of two then-AME employees. Only one of those alleged two eye-witnesses, David C. Popke (“Popke”), is no longer employed and paid by Pefanis. Defendants listed Popke on their witness list for the trial in this case set on the October 13 calendar. Defendants also proffered as trial evidence a statement purportedly signed by Popke whereby Popke claims to have no recollection of witnessing the alleged assault (“Popke Statement”). Defendants produced the Popke Statement in discovery and relied upon it to represent to the Court a central premise in their Briefs and in their Statement of the Case that Forsberg cannot corroborate her assault allegation.

Defendants never provided Plaintiff with Popke’s current address. But Plaintiff just located him in Texas. He has now testified by Declaration that (1) he indeed witnessed the assault; (2) AME co-owners Pefanis and Wayne Bonertz (“Bonertz”) sought to pressure him to sign the false Popke Statement but he never did so; and (3) the signature on the Popke Statement Defendants proffered as linchpin evidence in this case is a forgery.

Plaintiff has retained a renowned handwriting analysis expert. The expert’s opinion confirms Popke’s testimony and the conclusion that the clear and convincing evidence (the standard on this motion) establishes that the Popke Statement is a forgery. In the last week, Plaintiff has provided Defendants with repeated opportunities to present contrary evidence but Defendants have failed to

do so. Instead, Defendants have provided evasive, dilatory, illogical and incredible positions.

As set forth in the attached Brief, federal courts uniformly hold that, when a party fabricates a document relating to a key issue in the case, the appropriate sanction is the ultimate sanction of dismissal or default. Accordingly, Plaintiff respectfully requests that the Court enter default against Defendants and award Plaintiff her attorneys' fees and costs incurred because of Defendants' fraud on the Court.

In support of this Motion, Plaintiff files concurrently her Brief in Support of this Motion with attached exhibits.

Respectfully submitted,

s/Benjamin A. Stone
Georgia Bar No. 683850

s/Thomas J. Munger
Georgia Bar No. 529609

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the "PLAINTIFF'S
MOTION FOR DEFAULT SANCTION FOR DEFENDANTS' FRAUD ON THE
COURT" with the Clerk of Court using the CM/ECF system which will
automatically send email notification of such filing to David C. Ates, Esq.

This 2nd day of September, 2009.

s/Thomas J. Munger
Georgia Bar No. 529609